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10 UNITED STATES DISTRICT COURT

11
12 NORTHERN DISTRICT OF CALIFORNIA

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14 UNITED STATES OF AMERICA, ex rel.
15 GREGOR LESNIK; STJEPAN PAPES,

16 Plaintiffs,

17 vs.

18 EISENMANN SE, et al.

19 Defendants.

20 Case No.: 5:16-cv-01120-BLF

21 PLAINTIFF STJEPAN PAPES'
22 ADMINISTRATIVE MOTION FOR LEAVE TO
23 FILE MOTION FOR RECONSIDERATION TO
24 ALLOW FOR FILING RULE 54 MOTION FOR
RECOVERY OF ATTORNEYS FEES

25 Ctrm: 3, 5th Floor

26 Judge: Hon. Beth Labson Freeman

27 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

28 PLEASE TAKE NOTICE that pursuant to Northern District of California Civil Local
Rule 7-9, Plaintiff Stjepan Pages hereby moves this Court for an order granting him leave
to file a motion for reconsideration of this Court's September 19, 2021 Order Granting in
Part and Denying Plaintiffs' Third Motion for Default Judgment as to Trafficking Victims
Protection Reauthorization Act Claim (Dkt # 586).

The Order denied a request for fees. To the extent this precludes a Rule 54 Motion
for Fees, Plaintiff Pages respectfully contends that the Order failed to consider material
facts or dispositive legal arguments which were presented to the Court before such

1 interlocutory order. (See *Villanueva v. United States*, 662 F.3d 124, 128 (1st Cir. 2011)
 2 (where movant shows district court has misunderstood the party or made error of
 3 apprehension, reconsideration may be proper).) Plaintiff Papers had identified the basis
 4 for recovery of fees, Papers had not filed a Rule 54 motion to be decided, and the time for
 5 Papers to file a motion for fees still has not expired under Federal Rules of Civil Procedure
 6 Rule 54 and Civil Local Rule 54-5.

7 Under Northern District Civil Local Rule 7-9, a party may seek leave to file a motion
 8 for reconsideration any time before judgment. (N.D. Civ. L.R. 7-9(a).) The Court issued its
 9 interim Order while motions for default judgment are still unresolved. This administrative
 10 motion for leave is being filed on October 3, 2022, which is prior to entry of Judgment.
 11 (See FRCP Rule 54(b).)

12 A motion for reconsideration may be made under Local Rules on three grounds.
 13 Here, Plaintiff believes that there was a “failure by the Court to consider material facts or
 14 dispositive legal arguments which were presented to the Court before such interlocutory
 15 order.” (N.D. Civ. L.R. 7-9(b)(3).)

16 The moving party may not reargue any written or oral argument previously
 17 asserted to the Court. (Id., 7-9(c). See also *Hopkins v. Bonvicino*, 2011 WL 995961, *1
 18 (N.D. Cal. Mar. 21, 2011) (White, J.) (unpublished).) Here, the Plaintiff did not have an
 19 opportunity to present oral argument on issues raised by the Order, or matters raised by
 20 the Court in its Order that were not raised by moving party in his Motion.

21 Plaintiff thus seeks leave to move for reconsideration of the ruling and that he be
 22 allowed to seek recovery of fees under the Coerced Labor Cause of Action by a Rule 54
 23 Motion for Fees

24 The motion for reconsideration is based on FRCP Rules 54, 59(e) and 60(b),

1 Northern District Civil Local Rule 7-9, and 54-5, and this Court's inherent authority.

2 Local Rule 7-9 states "Unless otherwise ordered by the assigned Judge, no
3 response need be filed and no hearing will be held concerning a motion for leave to file a
4 motion to reconsider. If the judge decides to order the filing of additional papers or that
5 the matter warrants a hearing, the judge will fix an appropriate schedule." (N.D. Civ. L.R.
6 7-9 (d).)

7 Plaintiff Pages attaches as Exhibit to this motion the proposed Motion for
8 Reconsideration.

9 Plaintiff Pages request that the Court grant him leave to file a motion for
10 reconsideration and determine whether filing of additional papers or a hearing is
11 appropriate.

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13
14 Dated: October 3, 2022
15

16 /s/
17 William C. Dresser
18 Attorneys for Plaintiff
19 Stjepan Pages
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US ex rel Lesnik, et al v Eisenmann, et al; US Dist Ct., ND Cal. no. 5:16-cv-01120 BLF

Attachment to Administrative Motion

proposed Motion for Reconsideration

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13 UNITED STATES OF AMERICA, ex rel.
14 GREGOR LESNIK; STJEPAN PAPES,

15 Plaintiffs,

16 vs.

17 EISENMANN SE, et al.

18 Defendants.

19 Case No.: 5:16-cv-01120-BLF

20 [proposed]

21 PLAINTIFF STJEPAN PAPES' MOTION FOR
22 RECONSIDERATION TO ALLOW FOR
23 FILING RULE 54 MOTION FOR RECOVERY
24 OF ATTORNEYS FEES

25 Date: February 2, 2023

26 Time: 9:00 a.m.

27 Ctrm: 3, 5th Floor

28 Judge: Hon. Beth Labson Freeman

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 2, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the United States District Court for the Northern District of California, San Jose, Courthouse, located at 280 South First Street, San Jose, California, in Courtroom 3, before the Honorable Judge Beth Labson Freeman, Plaintiff Stjepan Pages will and hereby does move pursuant to Federal Rules of Civil Procedure, Rules 59(e) and 60(b), Northern District Civil Local Rule 7-9, and this Court's inherent authority for reconsideration of this Court's September 19, 2021 Order Granting in Part and Denying Plaintiffs' Third Motion for Default Judgment as to Trafficking Victims Protection Reauthorization Act Claim (Dkt # 586).

Plaintiff Pages requests that he be allowed to seek recovery of fees under the Coerced Labor Cause of Action by a Rule 54 Motion for Fees.

Moving Plaintiff's motion is based on this Notice of Motion and accompanying Memorandum of Points and Authorities, and the concurrently filed Motion for Fees including supporting Declarations, all documents in the Court's file, any other matters that this Court may take judicial notice, and on such written or oral argument that the Moving Plaintiff may present to the Court.

Dated: October 3, 2022

/s/ _____
William C. Dresser
Attorneys for Plaintiff Stjepan Pages

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Pages requests that this Court reconsider the September 19, 2021 Order Granting in Part and Denying Plaintiffs' Third Motion for Default Judgment as to Trafficking Victims Protection Reauthorization Act Claim (Dkt # 586) and allow him to seek recovery of fees under the Coerced Labor Cause of Action by a Rule 54 Motion for Fees.

Stjepan Papes is the prevailing party on the Third Amended Complaint under the NINTH CAUSE OF ACTION Trafficking and Coerced Labor under TVPRA (18 U.S.C. § 1595). The TVPRA provides that a victim "may recover damages and reasonable attorney's fees." (18 U.S.C. § 1595, subd (a).) The NINTH CAUSE OF ACTION Trafficking and Coerced Labor under TVPRA (18 U.S.C. § 1595) requested relief of these fees: "353. Plaintiffs also request recovery of attorneys fees and costs."

Plaintiff's April 8, 2021 Renewed Motion for judgment under a coerced labor claim states:

“Plaintiffs Lesnik and Papes seek compensatory damages, exemplary damages, and attorney’s fees against defendants ISM Vuzem, d.o.o., ISM Vuzem USA, Inc., Vuzem USA, Inc., HRID-Mont, d.o.o., Robert Vuzem, and Ivan Vuzem.”

Dkt # 560, at pg 9

"An individual who is a victim of a violation of this chapter [Chapter 77 of Title 18] may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees." (18 U.S.C. 1595)

Id., at pg 12

The April 6, 2021 Renewed Motion also includes in the Conclusion “Attorney’s fees should also be awarded.” Id., at pg 30.

The same statement of the basis of the right to fees was stated in Plaintiffs' August 25, 2020 motion for judgment under a coerced labor claim. Dkt, 506 at pg 9 and 11.

The Court's September 19, 2021 Order Granting in Part and Denying Plaintiffs' Third Motion for Default Judgment as to Trafficking Victims Protection Reauthorization Act Claim (Dkt # 586) states:

Pages merely states “[a]ttorney’s fees should also be awarded.” Mot. at 30. Pages provides no further statements or information regarding attorney’s fees. Pages does not request a specific amount of attorney’s fees. Furthermore, Pages does not provide declarations or affidavits containing a statement of the services rendered by each person for whom fees are requested and a brief description of their relevant qualifications as is required by Civil Local Rule 54-5(b)(2)-(3). Accordingly, the Court DENIES Pages’ request for attorney’s fees.

Order, at pg 31.

Plaintiff believes this should be without prejudice to Plaintiff filing a motion under Rule 54 which is the motion containing that information. Civil Local Rule 54-5 cited to in the September 19, 2021 Order allows for a motion for attorneys fees to be filed after entry of judgment, as long as within 14 days of entry of judgment

(a) Time for Filing Motion. Motions for awards of attorney's fees by the Court must be served and filed within 14 days of entry of judgment by the District Court, unless otherwise ordered by the Court after a stipulation to enlarge time under Civil L.R. 6-2 or a motion under Civil L.R. 6-3.

Civ. Local Rule 54-5

Federal Rules of Civil Procedure, Rule 54 provides for the same 14 days after entry of judgment to file a motion for fees. Rule 54 states

“(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;"

FRCP, Rule 54

There has not been a Judgment entered in the within action. The time to file a motion under Rule 54 has not expired, and did not expire in September of 2021 when the Court issued an Order as to one of several causes of action in this case. Plaintiff Papers through counsel had intended to file a motion for fees after all Orders for judgment had been issued and within the time period set forth in the Local Rules and in the Federal Rules of Civil Procedure.

There being no judgment, relief was not requested for an extension of time to file a motion for fees.

Relief is sought on the basis of this Court's inherent authority regarding interim rulings and on "A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order," Civ. Local Rule 7-9, being the request for an Order allowing for fees, being requested in I. SUMMARY OF COERCED LABOR CLAIMS, with statutory authority quoted in IV. ARGUMENT A. Trafficking and Coerced Labor under TVPRA (18 U.S.C. § 1595) 1. Civil lawsuit is authorized in situations like those in this case, and requested in VI. CONCLUSION."

Plaintiff Pages brings this motion prior to the hearing on a pending motion for judgment on FLSA claims. This motion is sought to be heard concurrently with that

1 motion for judgment, and a motion for fees.

2 WHEREFORE, Plaintiff Pages requests that this Court reconsider the September
3 19, 2021 Order insofar as it would preclude Plaintiff Pages from recovery under the
4 concurrently filed Rule 54 motion for fees, which motion which is filed "no later than 14
5 days of the entry of judgment.' Plaintiff Pages requests an Order allowing him to seek
6 recovery of fees under the Coerced Labor Cause of Action by the concurrently filed Rule
7 54 Motion for Fees.

8
9 Dated: October 3, 2022

10 _____/s/_____
11 William C. Dresser
12 Attorneys for Plaintiff
13 Stjepan Pages
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